

1 Mail Stop Interference  
2 P.O. Box 1450  
3 Alexandria Va 22313-1450  
4 Tel: 571-272-4683  
5 Fax: 571-273-0042  
6

Filed 14 April 2008

Paper 27

7  
8 UNITED STATES PATENT AND TRADEMARK OFFICE  
9 BEFORE THE BOARD OF PATENT APPEALS  
10 AND INTERFERENCES  
11

12  
13 DAVID VINCENT ZYSAK,  
14 ROBERT ALAN SANDERS, MARKO STOJANOVIC,  
15 DAVID CAMMIADE, PETER YAU TAK LIN,  
16 MARIA DOLORES MARTINIZ-SERNA VILLAGRAN,  
17 JOHN KEENEY HOWIE, and  
18 RICHARD GERARD SCHAFFERMEYER  
19

20 Junior Party  
21 (Application 10/606,137),  
22

23 v.  
24

25 VINCENT ALLEN ELDER,  
26 JOHN GREGORY FULCHER, and  
27 HENRY KIN-HANG LEUNG  
28

29 Senior Party  
30 (Patent 7,037,540).  
31

32  
33 Patent Interference No. 105,579  
34 (Technology Center 1700)  
35

36  
37 Before Schafer; Lane, and Moore, Administrative Patent Judges.  
38

39 Lane, Administrative Patent Judge.  
40

41 **Judgment– Arbitration – Bd.R. 126(f)**

42 The parties have filed an arbitrator's decision. (Paper 25).<sup>1</sup> In that  
43 decision, the arbitrator concluded that junior party Zysak "was both first to  
44 conceive and first to reduce to practice the subject matter of the count [i.e., count  
45 1]" and that "priority of invention lies with" Zysak. (Paper 25 at 9).

---

1 The parties were authorized to undertake arbitration under Bd. R. 126 (Paper 23) and the parties filed an agreement to arbitrate. (Paper 24).

1           The parties agree that judgment should be entered against senior party  
2 Elder. (Paper 26 at 2).

3           It is

4                   ORDERED that judgment on priority as to Count 1 (Paper 1 at 4),  
5 the sole count of the interference, is entered against senior party Elder;

6                   FURTHER ORDERED that claims 1-13 of Elder patent 7,037,540  
7 be CANCELLED, 35 U.S.C. § 135(a);

8                   FURTHER ORDERED that the parties are directed to 35 U.S.C.  
9 § 135(c) and Bd. R. 205 regarding the filing of settlement agreements; and

10                   FURTHER ORDERED that a copy of this judgment and the  
11 arbitration award shall be entered into the administrative record of Elder patent  
12 7,037,540 and Zyzak application 10/606,137.

13

14                               /Richard E. Schafer/                              )  
15                               RICHARD E. SCHAFER                              )  
16                               Administrative Patent Judge                              )

17    )  
18    )

19                               /Sally Gardner Lane/                              )  
20                               SALLY GARDNER LANE                              )  
21                               Administrative Patent Judge                              )

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

22    )  
23    )  
24                               /James T. Moore/                              )  
25                               JAMES T. MOORE                              )  
26                               Administrative Patent Judge                              )

27  
28  
29  
30  
31  
32  
33  
34

1 cc (electronic filing):  
2  
3 Counsel for Zyzak:  
4  
5 S. Robert Chuey, Esq.  
6 THE PROCTER & GAMBLE COMPANY  
7 Sharon Woods Technical Center  
8 11511 Reed Hartman Highway  
9 Cincinnati, OH 45241  
10 Tel: 513-626-3841  
11 Email: [chuey.sr@pg.com](mailto:chuey.sr@pg.com)  
12  
13 Counsel for Elder:  
14  
15 Charles L. Gholz, Esq.  
16 OBLON, SPIVAK, McCLELLAND,  
17 MAIER & NEUSTADT, P.C.  
18 1940 Duke Street  
19 Alexandria, VA 22314  
20 Tel : 703-413-3000  
21 Email : [cgholz@oblon.com](mailto:cgholz@oblon.com)  
22 Email : [cahoon@cclaw.com](mailto:cahoon@cclaw.com)  
23 Email : [jkelly@oblon.com](mailto:jkelly@oblon.com)  
24